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10/596,111	03/06/2007	Rolf Neumann	PHDE030400US	2170

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EXAMINER	
RAJAN, KAI	
ART UNIT	**PAPER NUMBER**
3769	
MAIL DATE	**DELIVERY MODE**
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/596,111	NEUMANN, ROLF	
	Examiner	Art Unit	
	Kai Rajan	3769	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *29 May 2009*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *2,4,6-14,16,17 and 19-25* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *2,4,6-14,16,17 and 19-25* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on May 29, 2009 has been entered.

Note to Applicant Regarding Claim Interpretation

The terms "designed to," wherein," and "for" in the claim(s) may be interpreted as intended use. Intended use/functional language does not require that reference specifically teach the intended use of the element. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 2, 4, 6 – 12, and 23 – 25 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claim 11 positively recites limitations that

overlap statutory classes. In this case, the applicant has positively recited *a method and an apparatus* in the same claim. See MPEP 2173.05(p) II. Claims 2, 4 – 10, 12, and 23 – 25 are rejected based on their dependency on claim 11.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 13, 14, 16, 17, 19 – 23, and 25 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Regarding claims 13, 14, 16, 17, and 19, the written disclosure does not support "[evaluating] the measured physiological *data* to determine a quality. . ." Rather, the entire specification and the original claims are drawn to evaluating the data *signal.* The Examiner submits that a physiological data *signal* is substantially different than physiological *data*. The electrodes of the system generate a signal even without measuring the physiological data of a patient. Furthermore, the specification does not discuss how the system evaluates the physiological data signal, let alone physiological data for a quality such as interference or transmission level.

Regarding claim 20, the specification provides no explicit support or teaching of "the quality signal . . . is perceivable only locally . . . and not at the remote site."

Regarding claim 23, the Examiner failed to find support in the specification for the apparatus "concurrently [communicating] the physiological data. . . and [evaluating] the at least one physiological data measurement signal." In addition to finding no recitation of the term "concurrently" or an equivalent term in the written description, the Examiner found disclosure of transmitting physiological data signals *after* evaluating a quality of the signal (see page 4, lines 22 – 29 of the submitted specification).

Regarding claim 25, there is no teaching in the specification to support "[evaluating] an interference level between the physiological data measurement signals," only disclosure to support each signal evaluated against a threshold.

While the Examiner has thoroughly checked the written disclosure for the aforementioned deficiencies, the Applicant is invited to cite support in the specification and clarify the record regarding why the claims do not present new matter.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 24 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In particular, the Applicant recites " . . . apparatus evaluates a *form* of the at least one physiological data measurement signal." The term *form* renders the claim indefinite, since one of ordinary skill in the art would be unable to ascertain the meaning of the term from the disclosure. Furthermore, the term *form* is unreasonably broad. In the art of electronic signals, a *form* may refer to the type of wave such as a square wave, or a property of the signal such as a

noisy or clean signal. The Examiner is unable to ascertain the meaning of the term *form* that the Applicant intends from a reading of the written disclosure, and has applied art in a manner sufficient to reject the claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 3, 4, 6 – 13, 16, and 19 – 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Mortara et al. U.S. Patent No. 5,704,351.

Note to Applicant: See previous action for rejection to unaddressed dependent claims, as they are rejected on substantially the same basis.

11. A medical measuring system comprising:

a data device including a display screen for displaying at least one of medical measurement values and graphs (Figure 1 item 16);

at least one mobile measuring apparatus which communicates wirelessly with the data device via a wireless communication signal, the mobile measuring apparatus including at least one sensor for generating a at least one physiological data measurement signal indicative of physiological data of a patient, the sensor communicating the at least one physiological data

measurement signal to the mobile measuring apparatus and the mobile measuring apparatus communicating the physiological data to the data device via the wireless communication signal (Figure 1 item 10, column 4 lines 66 – 67, column 5 lines 1 – 46)

wherein the at least one mobile measuring apparatus evaluates the at least one physiological data measurement signal to determine a quality of the at least one physiological data measurement signal and signals the quality of the at least one physiological data measurement signal generated by the at least one sensor (Column 5 lines 9 – 17).

13. A medical measuring system comprising:

one or more sensors designed to contact a portion of a patient to measure physiological patient data and generate physiological patient data signals indicative of the measured physiological patient data; (Figure 1 item 10, column 4 lines 66 – 67, column 5 lines 1 – 46);

a measuring apparatus which receives the physiological patient data signals from the one or more sensors, evaluates the measured physiological patient data to determine a quality of the physiological patient data (Column 5 lines 9 – 43), and

signals the quality of the physiological patient data (Column 5 lines 18 – 43 display module); and

a measurement display apparatus that displays physiological patient data generated by the one or more sensors, the physiological patent data being wirelessly transferred from the at least one measuring apparatus (Figure 1 item 16);

wherein the at least one measuring apparatus includes a means for determining a quality of the measured physiological patient data (Column 5 lines 9 – 17); and

a means for signaling the quality of the measured physiological patient data (Column 5 lines 9 – 17, see also claim 28).

16. A medical measurement device comprising at least one measurement apparatus including a means for wirelessly transmitting medical data to a remote site, one or more sensors for measuring medical data, and a means for determining and a means for signaling a signal quality of the medical data (Column 4 lines 66 – 67, column 5 lines 1 – 46, see also claim 28).

23. The medical measuring system as claimed in claim 11, wherein the mobile measuring apparatus concurrently communicates the physiological data to the data device and evaluates the at least one physiological data measurement signal (Column 10 lines 1 – 40).

24. The medical measuring system as claimed in claim 11, wherein the mobile measuring apparatus evaluates a form of the at least one physiological data measurement signal (Column 10 lines 1 – 40).

25. The medical measuring system as claimed in claim 11, wherein the at least one sensor includes a plurality of sensors which generate a plurality of the physiological data measurement signals and wherein the mobile measuring apparatus evaluates an interference level between the physiological data measurement signals (Column 10 lines 1 – 40).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 2, 14, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mortara et al. U.S. Patent No. 5,704,351 in view of Schwarzberg U.S. Patent No. 5,730,143.

In regard to claims 2, 14, and 17, Mortara et al., hereinafter Mortara, discloses indicating the signal strength of a measured signal to a user via a visual indicator (Mortara column 5 lines 18 – 43). Mortara fails to disclose alternatively indicating signal strength acoustically. However Schwarzberg a reference in an analogous art discloses notifying the patient via light or sound (Schwarzberg column 3 lines 63 – 67, column 4 lines 1 – 2). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to interchange the visual indicator of Mortara with an acoustic indicator, since Schwarzberg discloses the two as interchangeable and both suitable for notifying the patient of important information.

Response to Arguments

The previous Office Action of December 4, 2008 was mistakenly sent as a final rejection. Upon review of the previous action and Applicant's remarks, the finality of the previous action has been withdrawn.

Applicant's arguments have been fully considered but they are not persuasive.

In regards to independent claim 11, the claim recites "signaling the quality of the measuring signals." Mortara et al. discloses "checking the electrical quality of each of the electocardiographic electrode conections to patient . . . by determining the impedance of each of the connections." (Mortara et al. column 5 lines 9 – 11). Under the broadest reasonable interpretation of the claim language in light of the specification, the "impedance of each of the connections" is a "quality of the measuring signal." Therefore, the applied prior art is sufficient to reject claim 11 as currently presented.

In regards to independent claims 13 and 16, the claim recites "evaluating the measured . . . data to determine a quality of the measured . . . data." First, it is the Examiner's position that the Applicant does not have support in the written disclosure for determining a signal quality based on the EKG data alone. As such, the Examiner has interpreted recitations of "physiological data" as the signals emanating from the electrodes, pending response from the Applicant regarding new matter issues. The electrical quality test of Mortara et al. determines the impedance of each electrode and displays the resulting data to the user. Under the broadest reasonable interpretation of the claim language in light of the specification, the "impedance of each of the connections" is a "quality of the measured physiological patient data," since the impedance level is indicative of the EKG signal being received from each electrode. Therefore, the applied prior art is sufficient to reject claim 13 as currently presented.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kai Rajan whose telephone number is (571)272-3077. The examiner can normally be reached on Monday - Friday 9:00AM to 4:00PM.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Kai Rajan/
Examiner, Art Unit 3769

/Michael C. Astorino/
Primary Examiner, Art Unit 3769

August 17, 2009